Supreme Court, U.S.
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1994

ROBERT D. SPICKLER,
Petitioner

v.

ROBERT M. YORK,
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT OF THE
STATE OF MAINE

# PETITION FOR WRIT OF CERTIORARI

Robert D. Spickler
HCR 31 - Box 109
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## QUESTION I

IF THE STATE SUPREME COURT CONSISTED OF FOUR JUDGES AND THE ISSUE BEFORE THEM EITHER DISMISSES THE ACTION OR REMANDS IT FOR A JURY TRIAL; ON AN EVENLY SPLIT COURT, i.e., TWO FOR THE PETITIONER AND TWO AGAINST, WAS IT VIOLATIVE OF PETITIONER'S FOURTEENTH AMENDMENT RIGHTS WHEN THE STATE RULED IN FAVOR OF HIS ADVERSARY AND DISMISSED HIS ACTION?

## QUESTION II

IS IT VIOLATIVE OF A PRO SE PARTY'S FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS WHEN A STATE COURT PERMITS LAWYERS WHO OPPOSE HIM TO MAKE PROVEN UNTRUTHFUL STATEMENTS TO THE COURT RELATING TO GENUINE ISSUES OF MATERIAL FACT, AND THEN, OVER THE PARTY'S OBJECTION, PROCEED TO USE THOSE FALSE STATEMENTS AGAINST HIM?

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### GROUNDS ON WHICH JURISDICTION IS INVOKED

Date of Entry of Judgment by the
Maine Supreme Judicial Court.....May 22, 1995

Date of Entry of Order
Denying Petitioner's Motion
for Reconsideration.....June 23, 1995

Statutory Provisions Conferring
Jurisdiction on this Court....28 U.S.C. Sec.1331
28 U.S.C. Sec.1343(a)(3)

### CONSTITUTIONAL PROVISION INVOLVED

FOURTEENTH AMENDMENT:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

This honorable Supreme Court of the United States is asked to take judicial notice of the Petition for Certiorari currently on file in Spickler v. Maine, #95-291.[1]

## BASIS OF THE SUBJECT LITIGATION BROUGHT BEFORE THE MAINE COURTS

In 1973, Spickler employed Attorney York to represent him at the closing of the purchase of a 300 acre peninsula on the coast of Maine which Spickler and his partner, Dr. Pettengill, intended to develop into a community of year around homes.

At the outset at the closing, York, who had searched the title, announced that the seller of the property, Roger Dube, could not provide a clear title in the sale. After some discussion, it was agreed by all that the sale would take place, but Dube would proceed to bring an action in the Maine courts to "quiet" the title for Spickler and Pettengill.

---

[1] That petition, brought under 42 Sec. 1983, seeking prospective relief under Ex parte Young, 109 U.S. 123 (1908), is relevant and material to this petition in that it shows that since 1989 there has been an ongoing disregard for Petitioner's civil rights in the Maine courts and that this disregard will continue unless the Supreme Court intercedes.

However, it was further agreed that certain purchase-money mortgages, given by Spickler and Pettengill to Dube, would not begin to accrue interest or begin to be amortized until Dube cured the defects in the title. York assured Spickler and Pettengill that he would put this agreement in writing for Dube's signature and would hold the mortgages in escrow until Dube had cured the title defects.

Believing that York had the Dube agreement in writing and held the mortgages in escrow, Spickler bought out Pettengill and proceeded to spend hundreds of thousands of dollars to develop the property.

However, Spickler learned, in 1976, when Dube proceeded to foreclose on the mortgages before the title problems were cured, that York did not escrow the mortgages and did not have the promised written agreement which qualified them. Dube denied that there was any oral agreement made at the closing that mortgage payments would not begin until he cleared the title defects.[2]

In that the mortgages and their notes made no reference to any obligation of the mortgagee to clear

---

[2]Several months after Dube started foreclosure proceedings, the Maine Courts ruled that the title was clear, but Dube took the position that through his foreclosure action, the real estate and all the improvements made by Spickler reverted to him through his foreclosure.

the title, Dube's foreclosure was permitted because by its terms, the mortgages were over two years in default. Spickler's efforts to overturn the decision, based on the oral agreement at closing which Dube denied took place, failed.

As a result, Spickler lost several million dollars in that venture and his only remedy was to sue his attorney, Robert York, for negligence. That is how the subject lawsuit evolved.

During the process of this lawsuit, York presented various defenses, among which was that he did not represent Spickler during the closing with Dube.[3]

However, York's major defense, which gives rise to this petition, was that the jury was not competent to decide whether or not York was negligent by failing to put the oral agreement in writing without an expert witness who would testify that York was, in fact, negligent for failing to do so. And, in that Spickler had failed to announce his intention to call an expert during the first trial, he had waived his right to introduce one in the second trial. The Superior court agreed with this defense.

---

[3]Yet, York admitted under oath that Spickler paid his $8,000 bill for services at the closing. A jury also found that York, in fact, represented Spickler at closing. (A jury trial had been previously held in which the Jury also found York negligent during his representation of Spickler at the closing. This verdict was overturned by the Maine Supreme Judicial Court because Spickler introduced a previously unannounced expert witness and remanded this case for another trial.)

On appeal to the Maine Supreme Judicial Court, Spickler argued that even if he was not allowed to present expert testimony that York was negligent, the negligence was so basic and understandable through the life's experience of the average juror, that no expert was necessary for the jury to understand it. [A-7,8,23 - 25]

Four judges sat on the Maine Supreme Judicial Court in the appeal and two of them agreed with Spickler that the negligence was so apparent that no expert was necessary.

Notwithstanding this evenly split decision, the Maine Supreme Judicial Court agreed with York that an expert was needed and, forthwith, dismissed the case. [A-1] Spickler moved for Reconsideration of that Decision on the grounds that it was in violation of the equal protection provision of the Fourteenth Amendment. On June 23, 1995 the motion was denied. [A-2]

During the process of the subject state appeal, Appellee York was represented by Attorney Jonathan Piper who submitted a brief so full of misrepresentations of the record that Appellant Spickler filed a motion to strike it on the grounds that it was submitted by Piper who probably knew of its falsehoods when he filed it. [A-10-16,18-22] [4]

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[4] This particular experience was submitted to this Court in Spickler's Petition #95-291 at Pgs. 5, A-7 - 20.

York's lawyers did not respond to that Motion to Strike. The Maine Supreme Judicial Court ignored it and rendered no decision while it agreed with York and dismissed this case without a hearing.[5]

## ARGUMENT

As to QUESTION I:

**IF THE STATE SUPREME COURT CONSISTED OF FOUR JUDGES AND THE ISSUE BEFORE THEM EITHER DIMISSES THE ACTION OR REMANDS IT FOR A JURY TRIAL; ON AN EVENLY SPLIT COURT, i.e., TWO FOR THE PETITIONER AND TWO AGAINST, WAS IT VIOLATIVE OF PETITIONER'S FOURTEENTH AMENDMENT RIGHTS WHEN THE STATE RULED IN FAVOR OF HIS ADVERSARY AND DISMISSED HIS ACTION?**

The Fourteenth Amendment includes the following words:

> . . . (N)or shall any state) . . . (deny) to any person within its jurisdiction the equal protection of the laws.
>
> [Emphasis added]

When four judges make up a state Supreme Court and they are evenly divided on whether or not Petitioner's case is dismissed, it is not "equal protection" for the petitioner, acting pro se or not, to have an evenly split decision favor his adversary. The appeal should either have been reheard before five judges or some other disposition should have been ordered to comply with the Fourteenth Amendment's demand for equality.

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[5] Unlike other jurisdictions, the Maine Supreme Judicial Court, as a policy hears oral arguments on the majority of appeals. In fact, until recently, it heard oral arguments on all appeals.

As to QUESTION II:

**IS IT VIOLATIVE OF A PRO SE PARTY'S FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS WHEN A STATE COURT PERMITS LAWYERS WHO OPPOSE HIM TO MAKE PROVEN UNTRUTHFUL STATEMENTS TO THE COURT RELATING TO GENUINE ISSUES OF MATERIAL FACT, AND THEN, OVER THE PARTY'S OBJECTION, PROCEED TO USE THOSE FALSE STATEMENTS AGAINST HIM?**

The Fourteenth Amendment includes the following words:

> . . . (N)or shall any state deprive any person of . . . property without due process of law; . . .

Can anyone argue convincingly that Spickler, acting pro se, or anyone else, with or without a lawyer, was given due process when the Maine Supreme Court permitted the two opposing counsel to present in writing proven false facts which had vital relevance and materiality to the issues being decided?

A review of Spickler's motion to the Maine Court to strike Appellee York's Brief shows each falsehood as presented by Mr. Piper and his assistant to be false from the record of the first trial. Spickler's contentions in his Motion were unassailable. [A-10 - 16, 18- 22]

Mr. Piper knew it, and therefore could not and did not respond to the motion. The Maine Supreme Judicial Court knew it and it, too, did not respond to the Motion and would not even permit a hearing on the issue.

One must wonder, at this point, as to how this could happen in this country. Petitioner suggests a feasible explanation:

All judges in Maine, including the Chief Justice of the Maine Supreme Judicial Court, serve for seven year terms which are renewable for subsequent seven year terms until retirement, if the state legislature decides to re-appoint them.

The law firm, of which Mr. Piper is a member, is perhaps the largest firm in Maine. With their lobbying power and prestige, these fifty lawyers could influence the Maine legislature. It is improbable that any Maine judge would be re-appointed to the bench if Preti & Flaherty opposed the reappointment.

Judges and lawyers are on a first name basis and railroading can occur, particularly when the rights of an insignificant pro se party are at issue.

Think of it, Mr. Piper was cornered with the truth of Petitioner's Motion to Strike, but he knew he had allies sitting on the appeal and he, therefore, concluded he did not have to respond. In that respect he was right, wasn't he?

There is even more evidence that Mr. Piper knew he could use this approach with confidence. The record shows that he also made no response to Spickler's Motion for Reconsideration of the decision to dismiss the lawsuit because it was unequal treatment of Spickler to rule that an evenly split court should rule in favor of York. [A-3 - 6]

He was right again, the Court didn't need his response to act in favor of his client.

It will be interesting to read what Mr. Piper will say in his responsive brief to this petition. He must face up to the fact that he has no allies on this Court and he stands with the Petitioner on equal grounds. Petitioner knows Mr. Piper and predicts that his response will be full of ad hominum assertions and double talk but will submit no evidence or law to confront this brief, that is, if he responds at all.

## THIS WRIT SHOULD ISSUE FOR THE FOLLOWING REASONS

1. In the underlying case of York, Maine's Supreme Judicial Court has given, to York, Petitioner's property without due process of law, while it has also treated him without the equal protection of the law.

2. This Court has before it, in Petition #95-291, uncontradicted evidence that in recent years, Maine, under color of state law, has consistently violated Petitioner's Fourteenth Amendment rights to due process and equal protection.

3. Under the First Amendment, Petitioner is entitled to a forum to petition the government for a redress of his grievances. He holds various deeds to Maine real estate which

require confirmation of his title. Issues concerning title can only be resolved by the State of Maine through its courts. No other court has jurisdiction of disputes of title to Maine real estate. If this court denies this petition, it will be looked upon by the State and his adversaries as acquiescence of its treatment of Spickler by our country's highest court.

If this happens, it, in effect, obliterates Spickler's First Amendment right to petition the government for redress on his grievances concerning title. If Spickler can only expect a repetition of the way the state treated him in York, isn't it clear that he will really have no place to go to petition his government for a redress of his grievances?

There is a fourth reason to grant this petition. There is a growing skepticism in the country about the integrity of our government. This skepticism is felt by millions of decent tax-paying, patriotic Americans. These countrymen are like the petitioner, people who fight this country's wars and make it safe for this government to exist. It would be tragic to permit some judges, to whom they have given honor, to betray these people's trust.

If it were possible to submit this Petition to juries made up of <u>those people</u>, a thousand of those

juries would all grant certiorari, and so should this honorable Supreme Court of the United States. In so doing, it will help eliminate the skepticism, at least, about the third branch of our government.

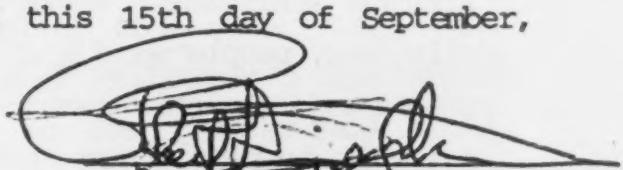
## CONCLUSION

Petitioner knows that this honorable Supreme Court has thousands of petitions and appeals on its docket, many of which it will consider more important to our country than his.

He also fears that, at first impression, members of the Court may conclude that a matter put before them by a pro se litigant may lack merit.

Please have your clerks read this brief thoroughly, together with with Petition #95-291 and with whatever the Respondent offers in reply. If they do, they will surely report to you that it deserves further investigation by the Court and should not be denied without it.

Respectfully submitted this 15th day of September, 1995.



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# APPENDIX

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MAINE SUPREME JUDICIAL COURT Reporter of Decisions

ROBERT D. SPICKLER

v.

ROBERT M. YORK

Submitted on briefs October 31, 1994
Decided May 22, 1995

Before WATHEN,C.J. and ROBERTS, CLIFFORD, and DANA,JJ.

MEMORANDUM OF DECISION

Robert Spickler appeals from a summary judgment entered in the Superior Court (Cumberland County, Saufley,J.) contending that the court erred in requiring expert evidence in this legal malpractice case, barring him from presenting an expert witness, and denying his motion to amend his complaint to include the claims of R. D. Realty Corporation. Because the Court is evenly divided on Spickler's first point and finds no merit in his other two, we affirm the judgment.

The entry is:

Judgment affirmed.

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STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court

Docket No.Cum-94-223
Decision No. 7254

ROBERT D. SPICKLER
Appellant

v.

ROBERT M. YORK
Appellee

ORDER

Upon motion of the appellant for reconsideration, it is ORDERED that the motion be, and it hereby is, DENIED.

Dated: June 23, 1995

For the Court,

/S/

Howard H.Dana, Jr.
Associate Justice

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court

Docket No. Cum-94-223

ROBERT D. SPICKLER

v.

ROBERT M. YORK

MOTION FOR RECONSIDERATION OF THE DECISION, DECIDED ON MAY 22, 1995.

Pursuant to Rule 76 A(b), Plaintiff/Appellant Spickler moves this honorable Law Court, as follows:

1. In his appeal, Spickler claimed that the lower court erred when it barred him from proceeding to trial without expert testimony to prove the negligence of Attorney York.

2. In the Law Court's Decision on this issue it was evenly decided, two justices agreeing with Spickler and two Justices disagreeing.[1]

ARGUMENT

Spickler suggests to this Court that an evenly divided opinion on an issue as important as this one which concerns sending this matter on to a trial by jury, should not result in favor of either party.

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[1] Irrespective of the forthcoming decision on this motion, Spickler asks the Court to identify the two justices who agreed with him on this issue.

To grant an evenly decided decision in favor of one would violate the other party's guarantee of equal treatment under the Fourteenth Amendment to the United states Constitution. This should be impermissible.

## RELIEF SOUGHT

The Law Court should vacate this Decision of May 22, 1995 as it pertains to whether an expert witness is required for a finder of fact and reconvene the Law Court with five justices and reconsider this appeal.[2]

But even if the Court disagrees that favoring one party over another in a split decision is unconstitutional, shouldn't the Court have looked further and examined other facts surrounding the issues of this case to justify favoring Spickler instead of York?

Examples

The jury, when this case was actually tried, after two weeks of intensive testimony, took only fifty minutes to arrive at the verdict finding York negligent.

They were not confused and they easily understood why and how York failed his client. While an expert did testify, they did not need him to explain why York was negligent.

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[2]If the Law Court grants this motion, Plaintiff hopes it will hear arguments this time.

The Court should also consider how badly Spickler and his family were damaged by York's misconduct. Everything they worked for all of their lives, their houses, their savings, their investments, all were lost because of York's negligence.[3]

On the other hand, York lost nothing and, instead, gained a fat fee.

Another relevant thing to consider, irrespective of any dislike the Court may have for Spickler, is that he, unlike York in many ways, has led a life of a decent American citizen.

1. He has served his country in battle from Omaha Beach to the Elbe.

2. He has never been involved in any criminal activity (with the exception of being found in contempt of court for accusing an attorney of lying to the jury).

3. He has kept his family together for over fifty-one years, raising five children, some answering when their country called and all fine citizens. None of these children has any character blemish.

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[3]Spickler knows that some of the justices on this Court do not like him, primarily because they feel he has become involved in too many lawsuits. However, most of that litigation would not have evolved if York had not been negligent in the first place.

Has Defendant York so good a record?

It is prayed that this Court will put aside any subjective feelings it has for him and grant this motion to reconsider its Decision and re-open this Appeal, and hopefully change its mind in the end.

Respectfully submitted, this 31st day of May 1995.

/S/_____

Robert D. Spickler
Plaintiff/Appellant, pro se

Excerpts from Petitioner's Brief on Appeal to the Maine Supreme Judicial Court, arguing that Expert Testimony is not needed. #Cum-94-223]

Even if the Law Court disagrees with Appellant Spickler and decrees that no expert will be permitted in a new trial, Appellant has shown that no expert will be required in the forthcoming trial because the questions are not complicated and are recognized and understandable through the life experiences and ordinary knowledge of laymen.

The argument presented for York pretends to make this simple case into a complex one; apparently so complicated that the Law Court will be misled into into believing it is a morass of intricacies that no layman would understand.

On the contrary, Plaintiff's claim against York is very uncomplicated and easy for any juror to understand.

The questions are simple:

1. Was York Spickler's lawyer?

2. Did he promise to put Dube's agreement in writing?

3. Did he break the promise?

4. Was Spickler damaged by the broken promise?

5. How much was he damaged?

These questions are understandable by any randomly picked jury. By his or her answers, the juror will determine whether or not York committed malpractice.

The Law Court should agree.

Respectfully submitted this 13th day of July 1994.

/S/

Robert D. Spickler,
Plaintiff/Appellant pro se

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EXHIBIT IV

This EXHIBIT IV, although part of the proceedings in Spickler v. York, is a general representation of some of the tactics resorted to by adversary counsel in other cases.

Mr. Piper and his assistant made no response to this document. They could not offer any plausible explanation against the incontrovertible evidence which established their dishonesty.

Even so, the Law Court, in response to Spickler's MOTION TO STRIKE, stated, in effect, and apparently ignoring all of the proof against the attorneys, that perhaps Spickler is the one who is guilty of misconduct.

[See Order of the Law Court dated August 12, 1994]
[EXHIBIT V]

From the unconstitutional treatment of Spickler by the present Law Court, which is currently considering the York appeal, Plaintiff can prospectively say that, not only will the Law Court refuse to strike Appellee York's Brief, it will throw out the entire case. It has already notified the parties that it will not hear oral arguments in this case.

/S/_____
Robert D. Spickler

STATE OF MAINE

ON APPEAL
From the Superior Court
Cumberland, ss.

SUPREME JUDICIAL COURT
Sitting as the Law Court
Law Docket #CUM 94-223

ROBERT D. SPICKLER,
Plaintiff

v.

ROBERT M. YORK,
Defendant

MOTION TO STRIKE
APPELLEE'S BRIEF

1. Plaintiff/Appellant moves this honorable Law Court to strike Appellee's Brief on the grounds that his brief distorts facts crucial to Appellant's interests and violates the Rules which demand good faith conduct of his counsel.
2. Appellant's Memorandum in Support of this motion, filed herewith, argues with specificity the reasons why this motion should be granted.

Movant asks this Court to grant a separate hearing on this motion prior to the time that may be set aside for oral arguments or, in the alternative, he asks that the Court grant additional time to argue this issue at the time of oral arguments on the merits of the appeal.

Respectfully submitted this 28th day of July 1994.

/S/
Robert D. Spickler,
Plaintiff/Appellant,
pro se

HCR 31-Box 109
Phippsburg, Maine 04562
Tel. 207/389-2464

STATE OF MAINE

ON APPEAL
From the Superior Court
Cumberland, ss.

SUPREME JUDICIAL COURT
Sitting as the Law Court
Law Docket #CUM 94-223

ROBERT D. SPICKLER,
Plaintiff

v.

ROBERT M. YORK,
Defendant

APPELLANT'S MEMORANDUM IN SUPPORT OF MOTION TO STRIKE APPELLEE'S BRIEF.

## A SUMMARY OF THIS MEMORANDUM

This memorandum shows that counsel for York have abused their positions as Officers of the Court and members of a large law firm to harm pro se appellant, Spickler, in this appeal by distorting the Record and presenting falsehoods in their Brief with the intention of misleading the Law Court into making the wrong decision.

These counsel rely on the fact that the Law Court is correctly inclined, and has the right to believe that every licensed attorney who appears before them would follow the rules and not violate their oaths not to do falsehoods before the Court.

On the other hand, Spickler, appearing pro se, has no balancing presumption made in support of statements and assertions made by him to the Court.

It is this imbalance of presumptions of honesty that Movant asks this Court to address. For it is

this imbalance on which various other counsel rely when appearing against Spickler. They have used it to his detriment.

The Court is asked to take judicial notice from the record of the same type of misconduct of Attorney Jonathan Brogan in Spickler v. Greenberg, recently decided in CUM-93-633, decided on July 11, 1994, and that of Attorney Richardson referred to on Appeal in Spickler v. Dube, CUM-89-302, decided on July 11, 1994.

This misconduct on the part of these various attorneys has been persuasive and has effectively become a modus operandi when they deal with Spickler.

Such counsel misconduct should be addressed and dealt with in that no one who is faced with it can be given due process of law while pursuing his rights in the Maine courts.

## ARGUMENT IN SUPPORT OF MOTION

Our laws grant the honor of appointment as an Officer of the Court to all attorneys who make the oath "to do no falsehoods" before the Court.

THE MAINE BAR RULES make it clear that a lawyer shall not knowingly make a false statement, 3.7(a); and when appearing before a tribunal, he shall employ only such means that are consistent with the truth and shall not seek to mislead the judge or jury by any false statement of fact.

In appearing in a professional capacity before a tribunal, a lawyer shall not state or allude to any matter that will not be supported by the evidence. 3.7(e)(2)(ii)

For the convenience of this Court, Movant Spickler has reproduced Appellant's Reply Brief in this appeal, and attaches it hereto as EXHIBIT "A".

Appellant's Reply Brief proves, under any standard, that Appellee's Brief is pervaded with falsehoods and its purpose is to mislead the Court. It clearly violates the mandates of the Rules of Conduct of practicing attorneys and, to do justice, this Court should strike it from Appellee's defense of this appeal.

Movant has been subjected to similar misconduct by other defense attorneys in other cases.[1]

In that the misconduct in those cases are relevant to this motion, this Court is asked to take judicial notice of them.

Judicially Noticeable Case #1

In Spickler v. Greenberg, appealed CUM-93-663, decided July 11, 1994.

In that case on appeal, Spickler argued and submitted evidence covered by seventeen pages of his Brief on Appeal that Mr. Brogan presented falsehoods

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[1] In each of those cases, Movant Spickler has brought it to the attention of the Law Court as a side issue of peripheral importance. The Law court has remained silent until now on this issue.

to the Court and Jury. [See EXHIBIT "B" attached hereto.]

Mr. Brogan, in response to these seventeen pages of clear evidence of his misconduct, gave a rhetorical reply of one paragraph. In fact, he gave no response. [See EXHIBIT "C"]

When accused, (Mr. Brogan) offers no reponse to the evidence presented, the conclusion is against him. McCormick, Evidence, Sec. 338 at 956 (3rd. ed. 1984)

Judicially Noticeable Case #2

In Robert D. Spickler, et als. v. Dube, et als., CUM-89-302 (decided July 11, 1994) in response to Defendant's Brief, which argued that Spickler goes around making unjust claims against attorneys, Spickler asserted to the Law Court in his Reply Brief at Page 7 that Mr. Richardson had falsely stated to the U. S. District Court, ex parte that Spickler's attorney, Duane Fitzgerald, had stated that he believed that the letter, allegedly sent from Dube to Spickler, was legitimate.

This statement made by Richardson was known to be false when he made it to the District Court. [See EXHIBIT "D"]

Judicially Noticeable Case #3

In the case, Spickler v. Key Bank, CUM-92-44, Movant complained to the Law Court that he was

physically shoved by Attorney Robitzek during the trial of that case.

While the misconduct of Mr. Robitzek is not one of dishonest statements made by him, it is, nevertheless, another illustration of opposing attorneys being permitted to abuse him.

The Law Court is asked to contemplate what would have happened to Spickler if the tables were turned and he had been the one who had shoved Robitzek around.

Considering what happened to him when he reacted to Mr. Brogan's lies by calling him a phoney bastard, he would have been arrested on the spot. [See EXHIBIT "E"]

## CONCLUSION

There can be no question in the minds of this honorable Law Court that Robert D. Spickler, in his orderly and bona fide search of justice in the Maine courts, has been subjected to the misconduct on the part of opposing counsel which has all but obliterated his consitutional right to due process under the Fourteenth Amendment to the Constitution of the United States.

He begs this Court to rule for the record that it will not tolerate re-occurences of misconduct by lawyers who oppose him who falsify facts and distort interpretations of the law.

The Law Court should grant this Motion and strike Appellee's Brief from the Appeal and bring these mendacities to an end.

Respectfully submitted this 28th day of July 1994.

/S/

Robert D. Spickler,
Plaintiff/Appellant, pro se

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STATE OF MAINE

ON APPEAL
From the Superior Court
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SUPREME JUDICIAL COURT
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Law Docket #CUM 94-223

ROBERT D. SPICKLER,
Plaintiff/Appellant

v.

ROBERT M. YORK,
Defendant/Appellee

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# REPLY BRIEF

---

Robert D. Spickler
Plaintiff-Appellant
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## A SPECIAL NOTICE TO THE LAW COURT

Appellee York's Brief resorts to misstatements of facts and distortions of the record to such a degree that it endangers pro se Appellant Spickler in that he may not receive a fair consideration of the points he makes in this appeal.

Perhaps Appellee's attorneys, because they are members of a firm staffed with fifty lawyers, have the theory that a reviewing court will always accept the legitimacy of statements made by them when those statements are in conflict with those of a non-lawyer who chooses to represent himself.

Appellant urges the Court to examine the briefs with this special notice in mind.

In this Reply Brief, Appellant will identify these misstatements of facts and distortions of legal decisions and he will impeach them, unequivocally, with documents and transcriptions from the Record of this case.

## REPLY ARGUMENT I

### APPELLEE YORK'S BRIEF SUBMITS FALSE STATEMENTS AND DISTORTIONS OF FACT UNDER THE HEADING OF "STATEMENT OF FACT".

A. Appellee's Brief at Page 3 makes the untruthful statement that Robert Spickler was not, personally, liable for payments of the mortgages that York issued to Dube. The mortgage notes prove that Robert Spickler was a guarantor for all of the mortgages given by York to Dube. [See copies at the end of this Brief - Pages 13 - 15.][1]

B. The appellee's attorneys, who are obligated by law not to try to mislead the Court, attempt to convince the Court that one of the issues in this case is a "complex" stock purchase of a real estate holding company.[2]

However, on November 29, 1993, Plaintiff Spickler notified the Superior Court that he would not be making any claims of negligence or malpractice on the part of Mr. York based on the acquisition of R. D. Realty's stock, rather than by the deed. [APP. Pg, 185]

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[1] The intention to be dishonest with this Court is further revealed by the Appellee's Supplemental Appendix which includes the mortgages but "conveniently" omits the mortgages notes.

[2] This is obviously done to convince the Court that a jury is incompetent to decide the claim of malpractice and the phrase, "complex stock purchase", is repeated throughout York's Brief.

In that no claim will have been made on the stock purchase, that issue is moot and irrelevant to this lawsuit, and - the appellee knows it and is, therefore, being disingenuous to the Court by arguing otherwise.

C. The Appellee states that York represented Dr. Pettengill but does not state, as York admitted under oath, that he also represented Plaintiff Robert Spickler at the Closing.

This was another disingenuous presentation of fact to the Law Court to cause it to believe that York may not have been Spickler's lawyer at the Dube closing. [See York's admission that he represented Spickler at [APP - 82]

D. Appellee's distorted analysis of the Law Court's Decision in Spickler v. York, 566 A.2d 1385 (Me.1989) is another misrepresentation by his counsel in their "Statement of Fact">

The appellee states, audaciously, that the 1989 Decision "instructed" the trial court, as follows:

1. Expert testimony was needed to prove York's negligence.

2. That Spickler was precluded from introducing an expert "in any subsequent action".

No where in any part of the Law Court's Decision does the Law Court make either of those orders.

In fact, the key phrase used by the Defendant's counsel "in any subsequent action" shows that they, too, honestly understood that the Law Court allowed "subsequent action" and the "subsequent action" would not take place if the Law Court's decision meant what Defendant's counsel pretends that it means.

## REPLY ARGUMENT II

**APPELLEE MAKES THE GROUNDLESS ASSERTION THAT SPICKLER'S CLAIM THAT "YORK ADMITS" THAT THE ORAL AGREEMENT TOOK PLACE IS SELF SERVING AND UNSUPPORTED BY THE RECORD.**

At footnote 10 on Pages 17 and 18 of Appellee's Brief, York's counsel state:

> 10/ The self serving statements contained in the Plaintiff's Brief, i.e. "York admits that the oral agreement took place, (Footnote 10 continued on next page)
>
> (Footnote 10 continued from previous page)
> and where he BROKE HIS PROMISE to Spickler that he would put the oral agreement in writing and WOULD NOT DELIVER THE MORTGAGES TO DUBE UNTIL DUBE CLEARED THE TITLE, is unsupported by the record. The only statements made in that regard are the statements made by Robert Spickler himself. Representations to the contrary are misleading.

This contention is untrue and it was obviously known to be untrue by York's counsel when they made it.

It was, nevertheless, made because it goes to the heart of why this case should be remanded to trial with or without expert testimony.

York, as Spickler has argued in his Brief, did "admit" during the trial that the oral agreement took place. [See Page 19 of this brief.] Spickler and Pettengill both testified during the trial that York had promised to escrow the mortgages. [See Pages 17 and 18 of same]

And further, York did make the promise to Spickler in the presence of Dr. Pettengill, who testified during the trial that the promise took place.[3] [See Pages 16 and 17 of this Brief]

If York has a strong position in this appeal, why are all of these misrepresentations necessary?

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[3]Spickler, York and Pettengill were the subjects of rigid cross examination by Mr. Piper and none of their testimony was impeached or changed during the trial. York did not challenge Spickler's testimony about his promise to escrow the mortgages.

Excerpts from Reply Argument IV as submitted to the Maine Law Court in York which argues that expert testimony is not required.]

## REPLY ARGUMENT IV

Appellee's counsel, again distort and, yes, dishonestly present an assertion to the Court.

On Page 16 of their brief, they quote, out of context, from Appellant's Brief at pages 14 and 15, where Appellant summarizes for the Court what it had said in Jackson, then, immediately following that summary, Spickler's Brief goes on to say:

> HOWEVER, in the case against York, where York admits that the oral agreement took place, and where he BROKE HIS PROMISE to Spickler that he would put the oral agreement in writing and WOULD NOT DELIVER THE MORTGAGES TO DUBE UNTIL DUBE CLEARED THE TITLE, is a clear breach of duty that any sane layman would understand.
>
> And, any sane layman would also understand that York compounded his breach of duty when he falsely told Spickler that he kept his promise and caused Spickler to believe he could safely proceed with development of the real estate.
>
> NO EXPERT IS NECESSARY TO EXPLAIN THE CONSEQUENCES OF YORK'S BROKEN PROMISES TO SPICKLER.
>
> Any layman, through his ordinary knowledge and experience, knows that a lawyer should not break his promise to his client, at least, not without telling him he broke it.
>
> Any layman would also not need an expert to tell him that when York told his client, Spickler, he had Dube's signature to the oral agreement while he, in fact, had not, he breached his duty to Spickler.
>
> In Cyr v. Gressen, 150 Me. 248; 108 A.2d 316 (1954) The Law Court also ruled in that medical malpractice case than an expert

opinion is required in the proof with the same exception as in Jackson, i.e., obvious error within the ordinary knowledge and experience of laymen.

York's negligence and breach of duty is analogous to a physician who takes a Pap smear or other tissue from his patient and promises his patient he will send it to the laboratory to complete the biopsy, and he forgets, or othwerwise fails to do it. Then tells him or her, 'don't worry, I've got the biopsy report and you are in fine shape'. The early detection of the cancer for which the patient sought the test was rendered useless because of the physician's negligence and dishonesty.

Is a layman competent to understand that physicians breach of duty?

Of course he can, and a layman can understand York's breach of duty because his misconduct and that of the hypothetical physician are virtually identical.

Even more analogous circumstances can be demonstrated through hypothesis in Mitchell and Davis v. Jackson.

In Arguendo, the Law Court would have vacated the Summary Judgment if the evidence showed that:

1. Mitchell and Davis told the Jacksons that they had a viable case against the banks.
2. Mitchell and Davis promised Jackson that they would file a complaint against the banks immediately.
3. Mitchell and Davis forgot, or otherwise failed to file suit.
4. Jackson inquired a few weeks later and was told falsely that the suit had been filed.
5. The statute of limitations tolled and Jackson lost his right to proceed.

Jackson's situation vis-a-vis his attorneys would have been identical to Spickler's vis-a-vis York.

In either case, laymen would not require expert testimony to arrive at a verdict.

> The negligence and malpractice of the attorneys in both cases would be so obvious as to be within the ordinary knowledge and experience of laymen .

York's counsel, by taking out of context, Plaintiff's summary of what the Law Court said in Jackson, and not revealing to the Court that they had done so, committed an unforgiveable breach of the ethics demanded by the law and expected by society at large. . . .

/S/_____

Robert D. Spickler

Plaintiff/Appellant pro se